

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 11, 2008 Session

SAMICK MUSIC CORP. v. THOMAS A. HOY

Appeal from the Chancery Court for Sumner County
No. 2007C-249 Tom E. Gray, Judge

No. M2008-00441-COA-R3-CV - Filed October 22, 2008

This case involves an appeal of a trial court's grant of a Motion to Dismiss for failure to state a claim upon which relief can be granted. The complaint sought to recover amounts owed pursuant to a Security Agreement from the alleged Guarantor of the Security Agreement. Finding the trial court's decision to be proper, we affirm the dismissal.

Tenn. R. App. P. 3; Judgment of the Chancery Court Affirmed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., and ANDY D. BENNETT, JJ., joined.

Todd H. Hancock, Nashville, Tennessee, attorney for the Appellant, Samick Music Corporation.

Glenn B. Rose and J. David McDowell, Nashville, Tennessee, attorneys for the Appellee, Thomas A. Hoy.

OPINION

Samick Music Corporation ("Samick") is a wholesaler of musical instruments located in Sumner County, Tennessee. Hammell Music, Inc. ("Hammell") is a musical instrument retailer located in Michigan. On April 3, 1993, Thomas Hoy ("Hoy"), Hammell's president, entered into a Security Agreement on behalf of Hammell, reflecting that Hammell was a dealer of musical instruments manufactured and/or distributed by Samick; the terms of the Security Agreement gave Samick a security interest in all inventory supplied by it to Hammell. On the same day, Hoy executed a Guaranty, prepared by Samick, that was intended to make Hoy a guarantor of the debts of Hammell. However, Hoy's name, rather than Hammell's, was inserted in the space for the "Dealer" to be identified; Hoy signed the Guaranty. As a result, the Guaranty states that Hoy, as guarantor, guarantees the debts of Hoy, as dealer.

The parties did business pursuant to the terms of the Security Agreement until Hammell defaulted on its obligations. On October 1, 2007, Samick filed suit against Hoy in the Chancery

Court for Sumner County, alleging indebtedness in the amount of \$620,369.28. In its complaint, Samick sought to enforce the Guaranty against Hoy as written, and did not seek a reformation of its terms. Hoy subsequently filed a Motion to Dismiss for lack of personal jurisdiction and failure to state a claim upon which relief could be granted. Each party provided the trial court with affidavits in support of its position on the motion. In addition to opposing the motion, Samick asked the court for leave to amend, as an alternative to dismissal, if the court found a deficiency in the complaint.

The chancery court granted Hoy's Motion to Dismiss, finding that Hoy was subject to the personal jurisdiction of Tennessee courts, and that he was not a guarantor of Hammell's debts under the plain and unambiguous terms of the Guaranty. The court did not address Samick's request to amend its complaint.

ANALYSIS

I. Standard of Review

The trial court's Order granting Hoy's motion stated that the decision was "[b]ased upon the arguments of counsel, the Affidavits submitted, the Complaint which attached the Guaranty Agreement on which the Plaintiff's claim is based, and the entire record in this matter...". A trial court should review only the complaint, and any exhibits attached in accordance with Tenn. R. Civ. P. 10.03, when considering a motion to dismiss, and matters outside the pleadings should not be considered. *Trau-Med of America, Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 696 (Tenn. 2002); *Marceaux v. Thompson*, 212 S.W.3d 263, 266 (Tenn. Ct. App. 2006); *Pendleton v. Mills*, 73 S.W.3d 115, 120 (Tenn. Ct. App. 2001). However, "[i]t is left to the discretion of the trial judge whether or not to receive matters outside the pleading on a motion to dismiss for failure to state a claim." *Hixson v. Stickley*, 493 S.W.2d 471, 473 (Tenn. 1973). If a trial court does consider materials outside the pleadings, then Tenn. R. Civ. P. 12.02 provides that "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Tenn. R. Civ. P. 12.02; *Hixson*, 493 S.W.2d at 473; *Pendleton*, 73 S.W.3d at 121. Since the trial court in this case relied on materials outside the pleadings, we review the court's action using the Rule 56 summary judgment standard.

Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). This court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1977). We consider the evidence in the light most favorable to the non-moving party and resolve all inferences in that party's favor. *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003); *Godfrey v. Ruis*, 90 S.W.3d 692, 695 (Tenn. 2002). When reviewing the evidence, we first determine whether factual disputes exist. If a factual dispute exists, we then determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847

S.W.2d 208, 214 (Tenn. 1993); *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App. 1998).

Summary judgment is appropriate where a party establishes that there is no genuine issue as to any material fact and that a judgment may be rendered as a matter of law. Tenn. R. Civ. P. 56.04; *Stoval*, 113 S.W.3d at 721. Moreover, it is proper in virtually all civil cases that can be resolved on the basis of legal issues alone, *Byrd v. Hall*, 847 S.W.2d at 210; *Pendleton*, 73 S.W.3d at 121; however, it is not appropriate when genuine disputes regarding material facts exist. Tenn. R. Civ. P. 56.04. The party seeking a summary judgment bears the burden of demonstrating that no genuine disputes of material fact exist and that the party is entitled to judgment as a matter of law. *Godfrey*, 90 S.W.3d at 695. Summary judgment should be granted at the trial court level when the undisputed facts, and the inferences reasonably drawn from the undisputed facts, support one conclusion, which is the party seeking the summary judgment is entitled to a judgment as a matter of law. *Pero's Steak & Spaghetti House v. Lee*, 90 S.W.3d 614, 620 (Tenn. 2002); *Webber v. State Farm Mut. Auto. Ins. Co.*, 49 S.W. 3d 265, 269 (Tenn. 2001). The court must take the strongest legitimate view of the evidence in favor of the non-moving party, allow all reasonable inferences in favor of that party, discard all countervailing evidence, and, if there is a dispute as to any material fact or if there is any doubt as to the existence of a material fact, summary judgment cannot be granted. *Byrd v. Hall*, 847, S.W.2d at 210; *EVCO Corp. v. Ross*, 528 S.W. 2d 20, 24-25 (Tenn. 1975). To be entitled to summary judgment, the moving party must affirmatively negate an essential element of the non-moving party's claim or establish an affirmative defense that conclusively defeats the non-moving party's claim. *Cherry v. Williams*, 36 S.W.3d 78, 82-83 (Tenn.Ct.App. 2000).

II. Hoy's Motion to Dismiss

"A guaranty is a contract by which one person is bound to another for the fulfillment of a promise or engagement of a third party." *Villines v. Parham-Lindsey Grocery Co.*, 1927 WL 2210 at *6, (Tenn. Ct. App. Nov. 22, 1927). "If the language [of a contract] is clear and unambiguous, the literal meaning controls the outcome of the dispute." *Allstate Ins. Co. v. Watson*, 195 S.W.3d 609, 611 (Tenn. 2006). "A contract is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one." *Farmers-Peoples Bank*, 519 S.W.2d 801, 805 (Tenn. 1975). Under Tennessee law, a guaranty on a commercial contract is a special type of contract. *Squibb v. Smith*, 948 S.W.2d 752, 755 (Tenn. Ct. App. 1997). The settled law in this state is that a "guarantor in a commercial transaction shall be held to the full extent of his engagements and that the rule in construing such an instrument is that the words of the guaranty are to be taken as strongly against the guarantor as the sense will admit." *Farmers-Peoples Bank*, 519 S.W.2d at 804; *Mathis v. U.S.I. Properties, Inc.*, 894 S.W.2d 278, 280 (Tenn. Ct. App. 1994).

Taking the evidence in the light most favorable to Samick, we find that no genuine issue of material fact exists in interpreting the Guaranty. The instrument clearly states that Hoy will guarantee the debts of himself. The terms, which were written by Samick, are clear, unambiguous, and incapable of multiple interpretations; as such, we are bound by the literal interpretation of the written document. Though this reading may not reflect the parties' actual intent, we are nevertheless

unable to interpret it other than according to the plain meaning of its terms. *Allstate Ins. Co., supra*. Even if the terms of the agreement are read “as strongly against the guarantor as the sense will admit,” *Farmers-Peoples Bank*, 519 S.W.2d at 804, we cannot require Hoy to guarantee the debts of an unnamed party. Sense will only permit us to go as far as the plain, unambiguous terms of the agreement allow.

Samick argues that the intent of the parties when entering the Guaranty was for Hoy to guarantee the debts of Hammell. Hoy was never a dealer of Samick, and, therefore, would have incurred no debts to guarantee. Samick asserts that the obvious intent was for Hoy to guarantee the debts of Samick’s dealer, Hammell, and that the Guaranty should be enforced accordingly.

We are, however, limited in our review of the intent of the parties by the parol evidence rule. This rule is “not merely a rule of evidence, but is a rule of substantive law.” *Lyons v. Farmers Ins. Exchange*, 26 S.W.3d 888, 892 (Tenn.Ct.App. 2000); *Cummings & Co. v. Mascari*, 402 S.W.2d 719, 724 (Tenn.Ct.App. 1965). The parol evidence rule “provides that parol evidence ‘is inadmissible to contradict, vary, or alter a written contract where the written instrument is valid, complete, and unambiguous, absent fraud or mistake or any claim of allegation thereof.’” *Bradford v. Sell*, 240 S.W.3d 834, 838 (Tenn.Ct.App. 2007) (quoting *Airline Const. Inv. v. Barr*, 807 S.W.2d 247, 259 (Tenn.Ct.App. 1990)).

As stated earlier, the Guaranty clearly states that Hoy is guaranteeing the debts of himself. Samick is attempting to “alter” this interpretation with evidence that the parties’ intent was for Hoy to guarantee the debts of Hammell. Absent an allegation of fraud or mistake, we are unable to consider such evidence, and neither allegation was raised in Samick’s complaint.

The interpretation of the plain, unambiguous terms of the Guaranty require a finding that Hoy is not a guarantor of Hammell. We find no other reasonable interpretation of the language, nor are we permitted to consider parol evidence.

III. Samick’s Request to Amend its Complaint

Samick’s also complains that the trial court erred in not allowing it leave to amend its complaint as an alternative to dismissal if the court decided to grant Hoy’s motion; Samick made its request in its response to Hoy’s motion. Samick did not file a motion for leave to amend its complaint, nor did it file a post-judgment motion to alter or amend the judgment granting the motion.

Plaintiffs are permitted to amend a complaint once at any time prior to the filing of a responsive pleading by the defendant. Tenn. R. Civ. P. 15.01. “Tennessee law and policy have always favored permitting litigants to amend their pleadings to enable disputes to be resolved on their merits rather than on legal technicalities.” *Lee v. State Volunteer Mut. Ins. Co., Inc.*, 2005 WL 123492 at *11 (Tenn. Ct. App. Jan. 21, 2005) (citing *Karash v. Pigott*, 530 S.W.2d 775, 777 (Tenn. 1975)); *accord Morris Prop., Inc. v. Johnson*, 2008 WL 1891434 at *2 (Tenn. Ct. App. April 29, 2008). “However, once a judgment dismissing a case has been entered, the plaintiff cannot seek to

amend its complaint without first convincing the trial court to set aside its dismissal pursuant to Tenn. R. Civ. P. 59 or 60.” *Lee*, 2005 WL 123492 at *11; *accord Morris Prop., Inc.*, 2008 WL 1891434 at *2.

This Court faced a similar situation in *Lee v. State Volunteer Mut. Ins. Co., Inc.*, 2005 WL 123492 (Tenn. Ct. App. Jan. 21, 2005). In *Lee*, the plaintiffs filed a complaint alleging tortious interference with a contract. *Lee*, 2005 WL 123492 at *1. The trial court dismissed the complaint pursuant to a Tenn. R. Civ. P. 12.02(6) motion to dismiss. *Id.* The plaintiffs asserted that “the trial court was required to afford them an opportunity to amend their complaint before dismissing it.” *Id.* at 11. This Court held that:

[W]e decline to interpret Tenn. R. Civ. P. 15.01 to require trial courts to invite plaintiffs to amend their complaint before granting a Tenn. R. Civ. P. 12.02(6) motion. Such a rule would cause great trouble, delay, and expense for defendants and the courts, give plaintiffs an unfair procedural advantage, and remove any incentive for plaintiffs to be proactive in amending defective complaints in the face of meritorious Tenn. R. Civ. P. 12.02(6) motions to dismiss.

Id. (citing *Wagner v. Daewoo Heavy Industries America Corp.*, 314 F.3d 541, 543 (11th Cir. 2002)).

Both Tenn. R. Civ. P. 15.01 and 59.04 provide procedures by which Samick could have sought to amend its complaint; Samick did not exercise either of these options. In the absence of such a motion, the trial court did not err in not considering Samick’s request for leave to file an amendment to its complaint, in lieu of dismissal.

IV. Conclusion

For the reasons set forth above, the decision of the Chancery Court dismissing the Samick’s complaint is AFFIRMED. Costs are assessed against Samick, for which execution may issue if necessary.

RICHARD H. DINKINS, JUDGE